202 VA 849

Return to
FILE COPY
Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 5257

In the
Supreme Court of Appeals of Virginia
at Richmond

DAVID SAM PERRY, JR.

v.

JEANNE SHUMATE PERRY

FROM THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5257

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 23rd day of November, 1960.

DAVID SAM PERRY, JR., Appellant,

against

JEANNE SHUMATE PERRY, Appellee.

From the Law and Equity Court of the City of Richmond

Upon the petition of David Sam Perry, Jr., an appeal and supersedeas is awarded him from a decree entered by the Law and Equity Court of the City of Richmond on the 15th day of July, 1960, in a certain chancery cause then therein depending wherein Jeanne Shumate Perry was plaintiff and the petitioner was defendant; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said Law and Equity Court in the penalty of five hundred dollars, with condition as the law directs.

RECORD

* * * * *

BILL OF COMPLAINT.

To the Honorable Judges of the Law and Equity Court:

Plaintiff, Jeanne Shumate Perry, respectfully represents unto the Court the following:

1. Plaintiff was lawfully married in Halifax, North Carolina, to the defendant on March 9, 1956.
2. The parties hereto are members of the white race.
3. The parties hereto are domiciled in, and are, and have been actual bona fide residents of the City of Richmond, in the Commonwealth of Virginia, for a period of more than one year next preceeding the commencement of this suit. Parties last cohabited in the City of Richmond, Virginia.
4. One child was born of this marriage, Jacqueline de Rochonnet Perry, born April 17, 1956, in the Medical College of Virginia Hospital.
5. On Wednesday, April 17, 1957, at 3411 Delaware Avenue, Richmond, Virginia, the defendant, without any justification or excuse struck and beat the plaintiff in and about her face, arms and body.
6. On many occasions previous thereto the defendant threatened, abused, struck and beat the plaintiff, causing her to live in continuous fear for her own personal safety. On one occasion, in a drunken stupor, he fired a certain pistol owned by him in the plaintiff's home, in the presence of small children present.
7. Defendant habitually and repeatedly in recent

page 2 } months stayed out until the early morning hours without furnishing any explanation to the plaintiff for such conduct.

8. The aforesaid conduct of the defendant has been harmful to the plaintiff's health and plaintiff is incapable of suffering under these conditions any further.
9. On April 17, 1957 plaintiff had the defendant arrested for assaulting her and the parties have not cohabited since that date.

WHEREFORE, plaintiff prays that a decree of divorce from bed and board be awarded her; that upon the expiration of the proper time she be awarded a decree of divorce from the bond of matrimony; that the care and custody of the aforesaid child be awarded to her; that the defendant be required

to *apy* alimony to the plaintiff and support money to the plaintiff for the support of the aforesaid infant child; that the defendant be required to pay the plaintiff's attorney for representing her herein and the costs of these proceedings; that an injunction be entered restraining the defendant from interferring with or molesting the plaintiff in any way; and that the plaintiff may have such other relief as the nature of the case may require.

JEANNE SHUMATE PERRY.

Received and filed April 22, 1957.

Teste:

E. G. EARLE, JR., Deputy Clerk.

* * * * *

page 8 }

* * * * *

ANSWER.

The answer of David Sam Perry, Jr., to a bill of complaint exhibited against him by Jeanne Shumate Perry in the Law & Equity Court of the City of Richmond, Virginia.

For answer thereto, or to so much thereof as this respondent is advised it is material he should answer, he answers and says:

1. This respondent admits the truth of the allegations contained in Paragraphs 1, 2, 3, 4 of the bill of complaint.
2. This respondent denies the allegations as set out in the paragraphs numbered 5, 6 and 7 of said bill of complaint.
3. This respondent further denies the allegations as set out in Paragraph 8 of said bill of complaint and calls for strict proof of said allegations.
4. This respondent admits the allegations contained in paragraph numbered 9 of said bill of complaint.

And now having fully answered said bill of complaint, your respondent prays to be hence dismissed with reasonable costs expended.

DAVID SAM PERRY, JR.
By: BEECHER E. STALLARD, p. q.
1223-29 Cen. Natl. Bank Bldg.
Richmond 19, Virginia.

Received and filed April 30, 1957.

Teste:

LUTHER LIBBY, Clerk

* * * * *

page 11 }

* * * * *

ORDER.

This day came the parties hereto, in person and by counsel, on the plaintiff's motion for an order requiring the defendant to show cause why he should not be punished for his failure to obey the order entered herein on May 6, 1957, and for an order transferring all questions of custody and support for Jacqueline de Rochonnet Perry to the appropriate Juvenile and Domestic Relations Court, notice of which motion has been duly served on the defendant and was argued by counsel.

On consideration whereof, and it appearing to the Court that the defendant has failed to perform the order of this Court, entered on May 6, 1957, concerning the support of Jacqueline de Rochonnet Perry, infant child of the parties, the Court doth certify and refer all questions of custody, care and support of the said child, to the Juvenile and Domestic Relations Court of the City of Richmond for hearing and determination, as fully and to the same extent as if this suit had not been brought.

It is further ordered that the defendant appear in this Court on July 15, 1957 at 2:15 P.M., and show cause, if any he can, why he should not be fined, imprisoned or otherwise dealt with for his failure to pay the counsel fees and court costs as ordered.

Enter June 17, 1957.

T. C. F.

* * * * *

page 13 }

* * * * *

SUPPLEMENTAL BILL OF COMPLAINT.

To the Honorable Thomas C. Fletcher, Judge:

In addition to the allegations set forth in the bill of complaint heretofore filed, plaintiff respectfully represents unto the Court the following:

1. The defendant, on the night of April 23, 1957, at 312½ South Third Street, Richmond, Virginia, between the hours of 12 Midnight and 4:00 A.M., committed adultry with a person known to your plaintiff as Helen Meeks.
2. On numerous occasions, both before and after said date, defendant engaged in sexual intercourse with the said Helen Meeks at the aforesaid address.
3. The aforesaid acts of adultry were not committed through the connivance or with the consent of the plaintiff, and plaintiff has not cohabited with the defendant since she discovered his adultrous conduct.

WHEREFORE, plaintiff prays that she be awarded a decree of divorce from the bond of matrimony on the ground of adultry.

JEANNE SHUMATE PERRY.

Filed by Order June 18, 1957.

Teste:

EDW. G. KIDD, D. C.

* * * * *

page 15 }

* * * * *

ANSWER.

The answer of David Sam Perry, Jr., to a supplemental bill of complaint exhibited against him by Jeanne Shumate Perry in the Law & Equity Court of the City of Richmond, Virginia.

For answer thereto, or to so much thereof as this respondent is advised it is material he should answer, he answers and says:

1. This respondent denies the allegations contained in Paragraphs 1 and 2 of said supplemental bill of complaint and calls for strict proof of said allegations.

And now having fully answered said supplemental bill of complaint, your respondent prays to be hence dismissed with reasonable costs expended.

DAVID SAM PERRY, JR.
By: BEECHER E. STALLARD, p. q.
1223-29 Cen. Natl. Bank Bldg.
Richmond 19, Virginia.

Received and filed Jun 18, 1957.

Teste:

LUTHER LIBBY, JR., Clerk.

* * * * *

page 32 }

* * * * *

DECREE.

This cause, which has been regularly matured, docketed and set for hearing, came this day to be heard upon the Bill of Complaint, the Answer of the defendant, the Supplemental Bill of the plaintiff, and defendant's Answer to the Supplement Bill; upon proof of proper and legal service of process upon the defendant; upon the depositions of witnesses on behalf of the plaintiff; regularly taken after proper and legal notice to the defendant and filed in accordance with law; and was argued by counsel.

On consideration whereof, it appearing to the Court from the evidence, independently of any admissions of the parties in the pleadings or otherwise, that the parties are members of the white race and over the age of twenty-one; that they were lawfully married at Halifax, North Carolina, on March 9, 1956; that there is one infant child born of this marriage whose name and age is Jacqueline de Rochonnet Perry, born April 17, 1956: that the plaintiff is domiciled in and is and has been an actual bona fide resident of the State of Virginia for one year immediately preceding the commencement of this suit; that the plaintiff and defendant last cohabited in the City of Richmond, State of Virginia; that the allegation that the defendant committed adultery on the 23rd day of April,

1957, at 312½ South Third Street, Richmond, Vir-
page 33 } ginia, has been fully proven by the evidence; that the aforesaid act of adultery was not committed through the connivance or with the consent of the plaintiff and that the parties have not cohabited since the plaintiff learned of the aforesaid adultery; and that the plaintiff is entitled to the relief prayed for.

Therefore, the Court doth adjudge, order and decree that the plaintiff, Jeanne Shumate Perry, be, and she is divorced from the defendant, David Sam Perry, Jr., from the bond of matrimony on the ground of adultery, and that the bond of matrimony created by the marriage between these parties on the 9th day of March, 1956, be, and the same is dissolved, but as provided by law, each of the parties is prohibited from marrying again for a period of four months from the date of this decree.

It is further ordered that the defendant do pay to Gambill, Minor & Wright, Attorneys, Counsel for the Plaintiff, the sum of One Hundred Fifty Dollars ($150.00) in full of counsel fees for legal services rendered on behalf of the plaintiff.

And nothing further remaining to be done herein it is ordered that this cause be stricken from the docket and placed among the ended causes with leave to either party to have the same reinstated for good cause shown.

Enter Jan. 31, 1958.

T. C. F.

* * * * *

page 34 }

* * * * *

NOTICE OF MOTION FOR ALIMONY.

To: David Sam Perry, Jr.
207 N. Laurel St.

Take notice that on the 9th day of May, 1960, at 2:15 P.M., or as soon thereafter as I may be heard, I shall appear before the Honorable Judge Fletcher of the Law and Equity Court of the City of Richmond, Virginia, at his office in the City Hall, and move that the above-styled cause be reinstated on the docket of the Court for the purpose of having an order entered requiring you to pay alimony for my maintenance, for the reason that no such order was entered in the decree of

January 31, 1958. A copy of the petition praying for such order is hereto attached.

JEANNE SHUMATE PERRY.

* * * * *

page 35 }

* * * * *

PETITION.

Your petitioner, Jeanne Shumate Perry, complainant in the above-styled cause, respectfully represents:

That on the 31st day of January, 1958, she was granted a divorce from the bond of matrimony from the defendant, David Sam Perry, Jr.; that at such time your petitioner was in the need of support or alimony from the defendant; that since such time your petitioner is heavily in debt, in bad health, and is unable to properly support herself; and that for such reason your petitioner prays that the above-styled cause be reinstated on the docket and that an order be entered requiring the defendant to pay alimony for the maintenance of your petitioner, until the further order of the court.

I ask for this:

JEANNE SHUMATE PERRY.

* * * * *

page 38 }

* * * * *

ANSWER.

The Answer of David Sam Perry, Jr., Defendant herein, to petition filed by Jeanne Shumate Perry in the above styled cause.

For answer thereto, or to so much thereof as he is advised he should answer, this Respondent answers and says:

1. This respondent, David Sam Perry Jr., admits that the court on the 31st day of January, 1958, did grant a divorce from the bond of matrimony to the parties hereto, but would

show that the court has lost jurisdiction of this cause to allow alimony, inasmuch as it has been more than twenty-one days since the entry of the decree on January 31, 1958; that the decree did not specifically retain jurisdiction for this purpose or any other purpose.

WHEREFORE, the respondent prays that the court not reinstate this cause on the docket and if it is reinstated on the docket that the complainants' petition be dismissed for the reason that the court has not retained jurisdiction of the cause for the specific purpose prayed for by petitioner.

DAVID SAM PERRY, JR.
By: BEECHER E. STALLARD, p. d.
1223-29 Cen. Natl. Bank Bldg.
Richmond, Virginia.

Filed by Order of 7-15-60.

EDW. G. KIDD, D. C.

* * * * *

page 39 }

* * * * *

THIS cause came on this day to be heard on the papers formerly read, and the proceedings had therein; upon the petition of plaintiff to reinstate this cause on the docket and to allow her alimony, which was filed by leave of court; upon the answer of the defendant saying this court ought not to take further cognizance of this cause, because it has lost jurisdiction of the same; upon the testimony of the parties, taken *ore tenus;* and was argued by counsel.

And it appearing to the Court that it is proper so to do, it is, therefore, adjudged, ordered and decreed that this cause be reinstated upon the docket and it further appearing to the Court that it has not lost jurisdiction of this cause, the Court doth hereby overrule defendant's said motion to dismiss plaintiff's petition for lack of jurisdiction; and it is, therefore, ordered and decreed that the defendant pay to the plaintiff the sum of Twenty-five Dollars ($25.00) per month alimony, beginning the first payment on July 15, 1960, and continuing thereafter until the further order of the Court, to which the defendant, by counsel, excepted for the reasons stated in his written motion.

And the defendant having indicated an intention to apply to the Supreme Court of Appeals for an appeal from and supersedeas of this judgment, it is ordered that execution of said judgment be suspended for a period of four months, upon condition that the defendant, or someone for him, give, within fifteen (15) days of this date, a combination bond as provided for by statute in the penalty of Five Hundred Dollars ($500.00) for the suspension of said execution and the payment of said judgment and cost, said bond be conditioned and payable as the law directs, and if a petition for an appeal and supersedeas be filed before the Supreme Court of Appeals of Virginia, within said period of four months, then thereafter until said Court shall have finally acted on said petition.

Enter July 15, 1960.

T. C. F.

I object to this:

BEECHER E. STALLARD, p.q.

* * * * *

page 41 }

* * * * *

NOTICE OF APPEAL PURSUANT TO RULE 5.1 OF THE SUPREME COURT OF VIRGINIA AND ASSIGNMENT OF ERRORS OF THE DEFENDANT, DAVID SAM PERRY, JR.

The Defendant, David Sam Perry, Jr., appeals from a decree entered herein on July 15, 1960, whereby Plaintiff was awarded the sum of $25.00 per month alimony against the Defendant, beginning on July 15, 1960, and continuing monthly thereafter until the further order of the court; and hereby files this as his notice of appeal to the Supreme Court of Virginia.

The said Defendant assigns as error the following actions of the trial court:

1. In overruling Defendant's written motion, which in substance was set out in his Answer, to dismiss Plaintiff's petition for lack of jurisdiction because all matters in controversy between the parties had been or could have been adjudicated at the time and more than twenty-one days had elapsed since

the entry of the final decree on January 31, 1958, and the Court did not retain jurisdiction in the decree for any purpose.

2. In allowing Plaintiff any sum as alimony.

DAVID SAM PERRY, JR.
By: BEECHER E. STALLARD, p. d.
1223-29 Cen. Natl. Bank Bldg.
Richmond, Virginia.

Filed July 22, 1960.

Teste:

LUTHER LIBBY, Clerk.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	Page
Appeal and *Supersedeas* Awarded	1
Record	2
Bill of Complaint	2
Answer	3
Order—June 17, 1957	4
Supplemental Bill of Complaint	5
Answer	5
Decree—January 31, 1958	6
Notice of Motion for Alimony	7
Petition	8
Answer	8
Decree—July 15, 1960	9
Notice of Appeal and Assignments of Error	10